



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2013-0211]

Specific Environmental Guidance for Light Water Small Modular Reactor Reviews

AGENCY: Nuclear Regulatory Commission

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S Nuclear Regulatory Commission (NRC) staff is issuing its final Interim Staff Guidance (ISG) Combined License and Early Site Permit (COL/ESP) No. 027 (COL/ESP-ISG-027), "Specific Environmental Guidance for Light Water Small Modular Reactor Reviews." The purpose of this ISG is to clarify the NRC guidance and application of NUREG-1555, "Standard Review Plans for Environmental Reviews for Nuclear Power Plants: Environmental Standard Review Plan," with respect to environmental reviews for applications for licenses to construct and operate light water small modular reactors (SMRs). This guidance applies to environmental reviews associated with light water SMR applications for limited work authorizations, construction permits, operating licenses, early site permits (ESPs), and combined licenses (COLs).

DATES: The effective date of this COL/ESP-ISG-027 is [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Please refer to Docket ID **NRC-2013-0211** when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2013-0211**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3442; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**
You may obtain publicly available documents online in the ADAMS Public Documents collection <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. For the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- The agency posts its issued staff guidance in the agency external Web page <http://www.nrc.gov/reading-rm/doc-collections/isg>.

FOR FURTHER INFORMATION CONTACT: Tanya Hood, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone at 301-415-1387 or e-mail at Tanya.Hood@nrc.gov

Availability of Documents.

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

| ADAMS Accession No. | Document Title |
|------------------------|---|
| ML14100A648 | Interim Staff Guidance-027, Specific Environmental Guidance for Light Water Small Modular Reactor Reviews – Clean Version |
| ML13350A041 | Interim Staff Guidance-027, Specific Environmental Guidance for Light Water Small Modular Reactor Reviews – Redline Version |
| ML14049A011 | Interim Staff Guidance 26-27 Comment Resolution Summary Table |
| ML13347B127 | Interim Staff Guidance 26-27 Comment Resolution Detailed Table |

The NRC staff issues COL/ESP-ISGs to facilitate timely implementation of current staff guidance and to facilitate activities associated with review of applications for ESPs, design certifications, and COLs by the Office of New Reactors. The NRC staff intends to incorporate the final approved COL/ESP-ISG-027 into the next revision of the Environmental Standard Review Plan and related guidance documents.

The NRC posts all final ISGs on the NRC's public Web page at <http://www.nrc.gov/reading-rm/doc-collections/isg/>, which is where the public may easily obtain access to COL/ESP-ISG-027.

BACKFITTING AND ISSUE FINALITY:

Issuance of this ISG does not constitute backfitting as defined in § 50.109 of Title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule). Issuance of this ISG should not be regarded as backfitting under Commission and Executive Director for Operations guidance,

and would not otherwise be inconsistent with the issue finality provisions in 10 CFR part 52.

The NRC staff's position is based upon the following considerations.

1. *The ISG positions do not constitute backfitting, inasmuch as the ESRP is internal guidance to NRC staff.*

The ISG provides interim guidance to the staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *Backfitting and issue finality do not – with limited exceptions not applicable here – protect current or future applicants.*

Applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52 – with certain exclusions discussed below – were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in the ISG in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the ISG in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *NRC consideration of environmental impacts to address the requirements of the National Environmental Policy Act of 1969 (NEPA) are outside the scope of matters subject to backfitting protection, and are not a violation of issue finality provisions*

The NRC consideration of environmental impacts to address the requirements of the National Environmental Policy Act of 1969 (NEPA), and an applicant's submission of environmental information needed to support the NRC's consideration of environmental impacts under NEPA, do not fall within the scope of matters which constitute backfitting. Consideration of environmental impacts to address NEPA compliance falls within the scope of matters protected under issue finality provisions of an ESP and a COL application referencing an ESP. However, this protection applies only after an ESP is issued, or if a COL application references an ESP. The staff does not intend to apply the guidance to already-issued ESPs or COL applications referencing an ESP. Therefore, issuance of this ISG does not constitute a violation or inconsistency of the issue finality provisions applicable to ESPs or COL applications referencing an ESP.

CONGRESSIONAL REVIEW ACT:

This ISG is a rule as defined in the Congressional Review Act (5 U.S.C 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 25TH day of August, 2014.

For the Nuclear Regulatory Commission.

Joseph Colaccino, Chief
Policy Branch
Division of Advanced Reactor and Rulemaking
Office of New Reactors

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